

FAIR POLITICAL PRACTICES COMMISSION

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To: Vice Chair Eskovitz; Commissioners Casher, Wasserman and Wynne

From: Gary S. Winuk, Chief of Enforcement
Neal P. Bucknell, Senior Commission Counsel

Subject: In the Matter of Tim Do AKA Thinh Thien Do, Individually, and DBA Catering Food Supply (Fair Political Practices Commission Case No. 10/740)

Date: January 27, 2014

This matter is submitted for informational purposes only. No action is required by the Commission.

On November 14, 2013, the Fair Political Practices Commission (“Commission”) approved agenda item number 13, *In the Matter of Tim Do AKA Thinh Thien Do, Individually, and DBA Catering Food Supply*, FPPC Case No. 10/740, imposing a penalty in the amount of \$5,000 for one count of laundering money into the campaign account of Sacramento City Councilman Kevin McCarty, who was seeking election to the California State Assembly, 9th District, in 2009 and 2010. Attached hereto as Exhibit A is a copy of the Commission’s Stipulation, Decision and Order. The total amount laundered was \$5,000. (This laundering scheme was brought to light in substantial part because of information provided to the Enforcement Division by Councilman McCarty.)

Following the Commission's approval of the foregoing Stipulation, Decision and Order, the Enforcement Division contacted Councilman McCarty and requested that he turn over the laundered funds, totaling \$5,000, to the General Fund of the State of California, pursuant to Government Code section 85701. On January 23, 2014, the Enforcement Division received full payment from Councilman McCarty in this regard. As required by law, the funds will be turned over to the General Fund of the State of California in connection with the complete resolution of this matter.

* * * * *

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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

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11 In the Matter of:

12 TIM DO AKA THINH THIEN DO,
13 individually, and DBA CATERING
FOOD SUPPLY,

14 Respondent.

FPPC No. 10/740

STIPULATION, DECISION AND ORDER

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16 STIPULATION

17 Complainant, the Fair Political Practices Commission, and Respondent Tim Do AKA Think
18 Thien Do, individually, and DBA Catering Food Supply hereby agree that this Stipulation will be
19 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
20 meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondent, pursuant to section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
27 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
28 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 As described in Exhibit 1, it is further stipulated and agreed that Respondent made a contribution
4 in the amount of \$5,000 to a candidate for the California State Assembly, but the contribution was
5 laundered through intermediaries in violation of Government Code section 84301 (one count). Exhibit 1,
6 which is attached hereto and incorporated by reference as though fully set forth herein, is a true and
7 accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of \$5,000. One or more cashier's checks or money orders totaling said amount—to be paid to the
11 General Fund of the State of California—is/are submitted with this Stipulation as full payment of the
12 administrative penalty described above, and same shall be held by the State of California until the
13 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
14 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
15 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
16 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent
17 further stipulates and agrees that in the event the Commission rejects the Stipulation and a full

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1 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
2 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

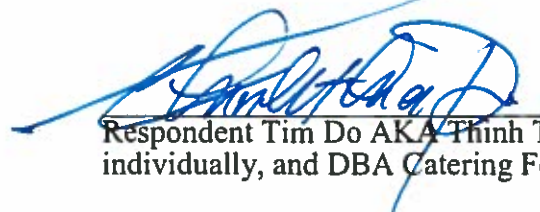
11/13/13



Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

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7 Dated: _____

11/13/13



Respondent Tim Do AKA Think Thien Do,
individually, and DBA Catering Food Supply

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10 **DECISION AND ORDER**

11 The foregoing Stipulation of the parties "In the Matter of Tim Do AKA Think Thien Do,
12 individually, and DBA Catering Food Supply," FPPC No. 10/740, including all attached exhibits, is
13 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
14 execution below by the Chair.

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16 IT IS SO ORDERED.

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18 Dated: _____

11/20/13



Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Tim Do AKA Thinh Thien Do owned and was doing business as Catering Food Supply, a business operating in Sacramento City/County. (Hereafter, all references to "Respondent" mean Respondent Tim Do AKA Thinh Thien Do, individually, and DBA Catering Food Supply.)

In 2009 and 2010, Kevin McCarty, a Sacramento City Councilman, was a candidate for the California State Assembly, 9th District. In this regard, he controlled a committee known as McCarty for Assembly 2010. However, he lost in the June primary election.

The Political Reform Act (the "Act")¹ imposes campaign contribution limits with respect to the making and receiving of certain contributions. However, these limits are adjusted periodically, and different limits apply depending upon who is contributing and who is receiving.

In 2009 and 2010, an individual wishing to contribute to a candidate for the California State Assembly could not contribute more than \$3,900 for the primary election and \$3,900 for the general election. (Attached hereto as Exhibit 2 is an FPPC publication regarding the contribution limits that were in effect for 2009 and 2010.) Also, per Section 85318, a candidate who received more than \$3,900 from a single contributor prior to the primary election was required to set aside and allocate the excess amount (up to an additional \$3,900) for the general election.

Money laundering occurs when an individual makes a contribution in the name of another. This is prohibited by the Act because it deprives the public of important information about the true source of campaign contributions. Also, the recipient of laundered contributions is deprived of the information needed to allocate contributions between the primary and general elections in order to comply with contribution limits as described above.

This case arises from a single campaign contribution that was laundered through intermediaries in December 2009.

For purposes of this stipulation, Respondent's violation of the Act is stated as follows:

Count 1: On or about December 31, 2009, Respondent made a contribution in the amount of \$5,000 to the committee known as McCarty for Assembly 2010, but the true source of the contribution was concealed. This was accomplished by making the

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

contribution in the names of intermediaries, thereby creating the false appearance that Respondent was not the true source of funds—when in fact, Respondent was the true source of funds. In this way, Respondent violated Section 84301, which prohibits campaign money laundering.

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act's provisions as they existed at the time of Respondent's violation in 2009.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Definition of Contribution

Generally speaking, "contribution" means a payment (including a loan), a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. (Sections 82015, subd. (a), and 82044.)

Prohibition Against Campaign Money Laundering

The Act prohibits the making of contributions in the name of another. (Section 84301.) This prohibition helps keep the public informed as to the sources of campaign contributions, and it helps ensure that would-be donors abide by the Act's contribution limits.

For these reasons, Section 84302 requires full disclosure when a person makes a contribution on behalf of another, or while acting as the intermediary or agent of another.

Campaign Contribution Limits

The Act imposes campaign contribution limits with respect to the making and receiving of certain contributions. However, these limits are adjusted periodically, and different limits apply depending upon who is contributing and who is receiving.

In 2009 and 2010, an individual wishing to contribute to a candidate for the California State Assembly could not contribute more than \$3,900 for the primary election and \$3,900 for the general election. (Attached hereto as Exhibit 2 is an FPPC publication regarding the contribution limits that were in effect for 2009 and 2010.)

Also, per Section 85318, a candidate who received more than \$3,900 from a single contributor prior to the primary election was required to set aside and allocate the excess amount (up to an additional \$3,900) for the general election.

SUMMARY OF THE FACTS

As stated above, at all relevant times, Respondent Tim Do AKA Think Thien Do owned and was doing business as Catering Food Supply, a business operating in Sacramento City/County.

In 2009 and 2010, Kevin McCarty, a Sacramento City Councilman, was a candidate for the California State Assembly, 9th District. In this regard, he controlled a committee known as McCarty for Assembly 2010. However, he lost in the June primary election.

Count 1: Campaign Money Laundering

On or about September 22, 2009, Respondent contributed \$1,000 to McCarty for Assembly 2010 at the request of Councilman McCarty.

Later, Councilman McCarty spoke with Respondent on the telephone and asked Respondent for more help before the end of the year. In response, Respondent put together a fundraiser at a Denny's restaurant, which took place on or about December 31, 2009.

Several members of the Vietnamese community attended the Denny's fundraiser. In order to make sure that the fundraiser was a success, Respondent arrived at Denny's before Councilman McCarty, and Respondent presented the community members with a single check in the amount of \$5,000. This was done with the understanding that the funds ultimately would be deposited into the campaign account of McCarty for Assembly 2010 through one or more intermediaries who would act as if they were the true source of the funds. Hereafter, Respondent's check in the amount of \$5,000 is referred to as the reimbursement check.

When Councilman McCarty arrived at Denny's, he was presented with an envelope containing three checks totaling \$5,000. One check was in the amount of \$1,500 from Entrust Realty Services, Inc., an entity which was represented at the fundraiser by its corporate secretary (and board member), Phuong Nguyen AKA Nikki Nguyen. Another check in the amount of \$1,500 was drawn on the account of Kevin P. Nguyen—who also was present at the fundraiser. The last check was in the amount of \$2,000 from Design Copy Print, LLC, an entity which was represented at the fundraiser by Mai Nguyen.

Respondent maintains that he did not put a payee on the reimbursement check, and Mai Nguyen is the person who accepted the reimbursement check from him. At the time, she had a close, personal relationship with one of the owners of Design Copy Print, LLC, the entity that wound up depositing the check. Of the amount deposited, Design Copy Print, LLC kept \$2,000 to reimburse itself for its own contribution. The remaining \$3,000 was used by Design Copy Print, LLC to write reimbursement checks to the other intermediaries.

No one notified the McCarty campaign that Respondent was the true source of funds.

In this way, Respondent violated Section 84301, which prohibits campaign money laundering.

In aggravation, not only was the public deceived as to the true source of the contributions, but the candidate (who also was ignorant as to the true source of funds) spent all of the money on the primary election—without setting aside/allocating the over-the-limit portion for the general election (as required by Section 85318).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, campaign money laundering is a serious violation of the Act because the public is deprived of information about the true source of campaign contributions, and often, the laundering involves violation of campaign contribution limits. Usually, stipulations involving this type of violation impose the maximum penalty of \$5,000 per count. (See, for example, *In the Matter of Ana Maria Gonzalez Ibarra*, FPPC No. 11/802 (Default Decision), approved Dec. 13, 2012 [\$5,000 penalty imposed per count].)

In this case, it is respectfully submitted that a similar penalty is warranted.

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$5,000 is recommended.

EXHIBIT 2

California
 Fair Political Practices Commission
California Contribution Limits
 Fast Facts

Candidates seeking a state office and committees that make contributions to state candidates are subject to contribution limits from a single source. Contributions from affiliated entities are aggregated for purposes of the limits. (Regulation 18215.1.) The chart below shows the current limits per contributor and type of office sought. The primary, general, special, and special run-off elections are considered separate elections.

Per-election Limits on Contributions to State Candidates
 (For elections held on or after January 1, 2009)

Contributor	Legislature/CalPERS	Statewide Except Governor	Governor
Person	\$3,900	\$6,500	\$25,900
Small Contributor Committee	\$7,800	\$12,900	\$25,900
Political Party	No Limit	No Limit	No Limit

Calendar Year Limits on Contributions to Other State Committees
 (2009 and 2010)

Contributor	Committee (Not Political Party) that Contributes to State Candidates	Political Party for State Candidates	Small Contributor Committee	Committee/Political Party Not for State Candidates
Person	\$6,500	\$32,400	\$200	No Limit*

*State committees (including political parties) may receive contributions in excess of the limits identified above as long as the contributions are NOT used for state candidate contributions. (Regulation 18534.)

Calendar Year Limits on Contributions to State Officeholder Committees

Elected state officeholders may set up officeholder accounts subject to contribution limits specified below.

Contributor	Legislature/CalPERS	Statewide Except Governor	Governor
Any Source Person, Small Contributor Committee or Political Party	\$3,200	\$5,400	\$21,500
Aggregate From all Sources	\$53,800	\$107,500	\$215,000

California
Fair Political Practices Commission
California Contribution Limits
Fast Facts

Legal Defense Funds

Contributions raised for a legal defense fund are not subject to contribution limits or the voluntary expenditure ceiling. However, a candidate or officeholder may raise, in total, no more than is reasonably necessary to cover attorney's fees and other legal costs related to the proceeding for which the fund is created. (Section 85304; Regulation 18530.4.)

Recall Elections

A state officeholder who is the subject of a recall may set up a separate committee to oppose the qualification of the recall measure and, if the recall petition qualifies, the recall election. Neither contribution limits nor voluntary expenditure ceilings apply to the committee to oppose the recall that is controlled by the officeholder who is the target of the recall attempt. Candidates running to replace an officeholder who is the target of a recall are subject to the contribution limits and the expenditure limits applicable to the election for that office. (Section 85315; Regulation 18531.5.)

Ballot Measure Committees

Contributions to ballot measure committees controlled by a candidate for elective state office are not limited. For additional information, see Contributions from State Candidates and Officeholders.

Contributions from State Candidates and Officeholders

A state candidate or state officeholder may not contribute more than \$3,900 to a committee controlled by another state candidate or state officeholder (including a state or local election committee, legal defense fund, officeholder account, recall committee, or ballot measure committee). This limit applies on a per election basis and includes, in the aggregate, contributions made from the candidate's or officeholder's personal funds and from campaign funds. (Section 85305; Regulation 18535.)

Communications Identifying State Candidates

Any committee that makes a payment or a promise of payment totaling \$50,000 or more for a communication that:

1. Clearly identifies a state candidate; but
2. Does not expressly advocate the election or defeat of the candidate; and
3. Is disseminated, broadcast, or otherwise published within 45 days of an election, may not receive a contribution from any single source of more than \$32,400 in a calendar year if the communication is made at the behest of the candidate featured in the communication. (Section 85310.)

Contributions from State Lobbyists

A state lobbyist may not contribute to a state officeholder's or candidate's committee if the lobbyist is registered to lobby the agency of the elected officer or the agency to which the candidate is seeking election. The lobbyist also may not contribute to a local committee controlled by any such state candidate. (Section 85702; Regulation 18572.)

Contribution Limits for Local Candidates and Committees

Check with the pertinent local jurisdiction for information regarding limits imposed by a local campaign ordinance.

Expenditure Ceilings

Using the formula specified in Regulation 18544, the Commission has established the following voluntary expenditure ceilings for elections held on or after January 1, 2009:

Voluntary Expenditure Ceilings for Candidates for Elective State Offices
(For elections held on or after January 1, 2009 - Does not apply to CalPERS Candidates, Section 85400(a))

Office	Primary/Special Election	General/Special Runoff Election
Assembly	\$518,000	\$906,000
Senate	\$777,000	\$1,165,000
Governor	\$7,768,000	\$12,946,000
Lt. Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Supt. of Public Instruction, Treasurer	\$5,178,000	\$7,768,000
Board of Equalization	\$1,295,000	\$1,942,000